

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 28, 2018

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2017AP856

Cir. Ct. No. 2015CV386

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

SOCIETY INSURANCE, A MUTUAL COMPANY,

PLAINTIFF-RESPONDENT,

V.

BRENDA DEGROSS,

DEFENDANT-CO-APPELLANT,

JAMES SPARISH,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County:
GARY R. SHARPE, Judge. *Affirmed.*

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Brenda Degross and James Sparish appeal from an order granting declaratory judgment in favor of Society Insurance, a Mutual Company, on the issue of insurance coverage. For the reasons that follow, we affirm.

¶2 Sparish was a partner at JJS Auto Body Clinic in Cumberland, Wisconsin. As its name suggests, JJS is in the business of repairing and refurbishing the exterior of vehicles. JJS had a “garage policy” with Society Insurance, which provided, among other things, liability coverage to its non-owned automobiles if used in its garage business. As a partner at JJS, Sparish was one of the named insureds.

¶3 In late January 2013, Sparish drove to Arizona in his personal truck with his girlfriend, Donna Nystrom, and an acquaintance, David Degross (David). Sparish planned to stay there for two months and engage in recreational motorcycling and socializing with friends. He also discussed with JJS the possibility of purchasing a used vehicle for the business and driving it back to Wisconsin.¹ Accordingly, Sparish charged some of his gas and food expenses to JJS’s business account.

¶4 On February 6, 2013, Sparish spent most of the day riding his motorcycle and visiting with friends. He returned to his motel in the late afternoon to wash up and get ready for dinner. Sparish wanted to go to a restaurant for some chicken wings. He took Nystrom and David in his truck. On the way there, Sparish reportedly discussed a used vehicle he had seen earlier that

¹ As Sparish later explained in his deposition, used vehicles in Arizona tend to make better candidates for refurbishing and reselling due to their lack of salt damage.

day that he considered pursuing for JJS.² Neither Nystrom or David were associated with JJS. Approximately one mile into their trip, Sparish's truck collided with another vehicle at an intersection, fatally injuring David. David's widow, Brenda Degross (Brenda), filed suit against Sparish, seeking damages related to David's death.

¶5 Society Insurance subsequently commenced this action, seeking a declaratory judgment that its garage policy did not provide coverage for the accident. Brenda and Sparish filed responses opposing the requested relief. Following a hearing on the matter, the circuit court issued an order granting declaratory judgment in favor of Society Insurance. This appeal follows.

¶6 In this case, we are asked to determine whether the circuit court properly granted declaratory judgment in favor of Society Insurance. The grant or denial of a declaratory judgment is addressed to the circuit court's sound discretion. *Olson v. Farrar*, 2012 WI 3, ¶24, 338 Wis. 2d 215, 809 N.W.2d 1. However, when the exercise of that discretion turns upon a question of law, we review the question independently. *Id.* Here, the circuit court's grant of declaratory judgment turned upon the interpretation of an insurance policy, which presents a question of law. *Id.*

¶7 Our goal in interpreting an insurance policy is to determine and carry out the intentions of the parties. *Siebert v. Wisconsin Am. Mut. Ins. Co.*, 2011 WI

² Sparish initially told Society Insurance that he did not have a chance to look for a used vehicle while on his trip to Arizona. However, at deposition, he appeared to contradict that statement. Sparish said that a used vehicle caught his eye while he was returning to the motel from a visit with friends. He stopped and looked at it "real quick." He did not talk to anybody at the car lot and did not remember the name of the dealer. He also did not take any pictures of the vehicle with his cell phone.

35, ¶31, 333 Wis. 2d 546, 797 N.W.2d 484. Accordingly, “we give the policy language its common and ordinary meaning, that is, the meaning understood by a reasonable person in the position of the insured.” *Id.* “[W]e do not interpret insurance policies to provide coverage for risks that the insurer did not contemplate or underwrite and for which it has not received a premium.” *Id.* (citation omitted).

¶8 We begin our analysis with the insurance policy at issue. Under it, Society Insurance was liable to “pay all sums an ‘insured’ legally must pay as damages because of ‘bodily injury’ or ‘property damage’ to which [the] insurance applies, caused by an ‘accident’ and resulting from ‘garage operations.’” “Garage operations” is defined as follows:

“Garage operations” means the ownership, maintenance or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations. “Garage operations” includes the ownership, maintenance or use of the “autos” indicated in Section I of this coverage form as covered “autos.” “Garage operations” also includes all operations necessary or incidental to a garage business.^[3]

¶9 On appeal, Brenda and Sparish contend that the circuit court erred in granting declaratory judgment in favor of Society Insurance. They submit that the language of the policy is broad enough to cover Sparish’s vehicle, regardless of whether he was actively engaged in business for JJS at the time of the accident. Alternatively, they maintain that Sparish’s actions constituted “operations necessary or incidental” to JJS, as he was looking to buy a used vehicle for the

³ Section I of the coverage form describes the covered autos in the garage policy in relevant part: “Any ‘auto’ you do not own, lease, hire, rent or borrow used in connection with your garage business described in the Declarations. This includes ‘autos’ owned by your ‘employees’ or partners (if you are a partnership) ... while used in your garage business.”

business and was discussing one potential candidate vehicle with his passengers at the time of the accident.

¶10 We are not persuaded by the appellants’ arguments. To begin, the language of the policy affords liability coverage to an insured for damages “caused by an accident *and resulting from ‘garage operations.’*” (Emphasis added). Given the definition of “garage operations,” which repeatedly references garage business, it would be unreasonable to expect such a policy to provide coverage under circumstances wholly unrelated to JJS. Moreover, Sparish was not conducting “operations necessary or incidental” to JJS at the time of the accident. Rather, he was on his way to a social dinner with two companions—neither of whom were associated with JJS. The fact that Sparish may have briefly discussed a business-related subject with them does not mean that he was using his vehicle for business purposes.

¶11 In the end, we conclude that Sparish was not engaged in business for JJS at the time of the accident, which was necessary to trigger coverage under the policy at issue. Accordingly, we are satisfied that the circuit court properly granted declaratory judgment in favor of Society Insurance.⁴

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2015-16).

⁴ To the extent we have not addressed an argument raised by the appellants on appeal, the argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).

